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June 14, 2012

Via ECF and Facsimile (267-299-5078)

The Honorable Michael M. Baylson
United States District Court
Eastern District of Pennsylvania
Independence Mall West
601 Market Street
Philadelphia, PA 19106

**Re: *Chester Upland School District, et al. v. Department of Education, et al.*
Docket No. 12-cv-00132-MMB**

Dear Judge Baylson:

I am writing in response to Mr. Hackett's June 11, 2012, letter setting forth the availability of Dr. Tony Watson to testify at trial. Defendants object to the reopening of Plaintiffs' case to permit this testimony. Defendants also object to Dr. Watson (the *District's* Superintendent) or Wanda Mann (President of the *District's* Board) being made the "Court's witness."

Plaintiffs have the burden of proof. It is Defendants' position that that burden was not met in Plaintiffs' case-in-chief. Permitting Plaintiffs to reopen their case – directly or indirectly with a "Court's witness" – is highly prejudicial. Respectfully, if Plaintiffs have not met their burden of proof, the proper result is the entry of judgment in favor of Defendants, not the reopening of Plaintiffs' case so that they can present testimony to try to fill a gap in proof that the Court identified *sua sponte*. Such is particularly the case given that Your Honor specifically suggested to counsel for the District *on the first day of trial* that he call Dr. Watson to testify, but the District chose not to do so. (5/9/12 Tr. at 184, l. 24 – 185, l. 3.)

Without waiving this objection, if the Court permits Dr. Watson to testify, Defendants are available on June 19 or 20 for that purpose. If either date is used, Defendants request that the filing of their post-trial brief likewise be extended by one day for each day of additional testimony, so as to accommodate that unexpected interruption.

Thank you for your ongoing consideration of this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Amy C. Foerster', with a long horizontal stroke extending to the right.

Amy C. Foerster

cc: All Counsel of Record (via email)